

PATRICK J. DALTON  
Senior Assistant City Attorney  
OFFICE OF THE CITY ATTORNEY  
808 W. Spokane Falls Blvd.  
SPOKANE, WA 99201-3326  
Telephone: (509)625-6225  
Fax:(509)625-6277

Attorneys for Defendants

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MAR 15 2012

JAMES R. LARSEN, CLERK  
DEPUTY  
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BRADLEY N. THOMA, a single person,

Plaintiff,

vs.

CITY OF SPOKANE, a municipal  
corporation in and for the State of  
Washington; and ANNE E. KIRKPATRICK,  
a single person,

Defendants.

NO. CV-12-156-EFS

NOTICE OF REMOVAL PURSUANT  
TO 28 U.S.C. §§ 1331, 1367, &  
1441(b)-(c)

TO: Clerk of the Superior Court of the State of  
Washington for Spokane County;

AND TO: Bradley N. Thoma, Plaintiff;

AND TO: Robert A. Dunn and Michael R. Tucker, Plaintiff's Attorneys.

NOTICE OF REMOVAL PURSUANT TO 28  
U.S.C. §§ 1331, 1367, & 1441(b)-(c)

ORIGINAL

OFFICE OF THE CITY ATTORNEY  
5<sup>th</sup> Floor Municipal Building  
Spokane, WA 99201-3326  
(509) 625-6225  
FAX (509) 625-6277

## NOTICE OF REMOVAL

Defendants City of Spokane and Anne E. Kirkpatrick remove the claims asserted against them pursuant to 28 U.S.C. § 1441. In support of removal, Defendants submit the following:

1. On February 28, 2012, Plaintiff's counsel provided the City of Spokane a copy of the Complaint for Damages ("Complaint") in the above-captioned matter. Plaintiff filed the Complaint in the Spokane County Superior Court on February 28, 2012.

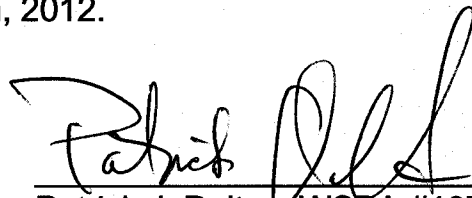
2. Plaintiff's Complaint alleges claims under 42 U.S.C. §1983 (Due Process) and §12101 (Disability) as well as state law claims. All of Plaintiff's claims arise from the imposition of discipline upon the Plaintiff during his employment by the City, and various other actions which Plaintiff alleges violate his federally-protected rights under color of state law.

3. Pursuant to 28 U.S.C. § 1441(b), removal is appropriate because this court would have had original jurisdiction over Plaintiff's §§ 1983 and §12101 claims, which are "founded on a claim or right arising under Constitution, treaties or laws of the United States." See *also* 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."). Additionally, when a claim arising under the laws of the United States "is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein." 28 U.S.C. § 1441(c). Consequently, removal of the entire action,

1 including Plaintiffs' state law claims, is appropriate. See also 28 U.S.C. § 1367 ("[I]n  
2 any civil action of which the district courts have original jurisdiction, the district courts  
3 shall have supplemental jurisdiction over all other claims that are so related to claims  
4 in the action within such original jurisdiction that they form part of the same case or  
5 controversy under Article III of the United States Constitution.").

6  
7 4. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b)  
8 because it is "filed within thirty days after the receipt by the defendant, through  
9 service or otherwise, of a copy of the initial pleading setting forth the claims for relief  
10 upon which such action or proceeding is based."  
11

12 DATED this 15<sup>th</sup> day of March, 2012.

13  
14 


15  
16 Patrick J. Dalton, WSBA #10782  
17 Senior Assistant City Attorney  
18 Attorney for Defendants  
19 Office of the City Attorney  
20 808 W. Spokane Falls Blvd.  
21 Spokane, WA 99201-3326  
22 Telephone: (509) 625-6225  
23 Fax: (509) 625-6277  
24 Email: pdalton@spokanecity.org  
25  
26  
27  
28

DECLARATION OF SERVICE

I declare, under penalty of perjury, that on the 15<sup>th</sup> day of March, 2012, I caused a true and correct copy of the foregoing Notice to Plaintiff of Removal to be delivered to the parties below in the manner noted:

Robert A. Dunn  
Michael R. Tucker  
Dunn & Black  
111 North Post, Suite 300  
Spokane, WA 99201  
Phone: (509) 455-8711  
Fax: (509) 455-8734

☐ VIA FACSIMILE  
☐ VIA U.S. MAIL  
☐ VIA OVERNIGHT SERVICE  
☒ VIA HAND DELIVERY



Stacie Floyd  
City Attorney's Office  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201-3326

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FEB 28 2012

CITY CLERK'S OFFICE  
SPOKANE, WA

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THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE

BRADLEY N. THOMA, a single  
person,

Plaintiff,

v.

CITY OF SPOKANE, a municipal  
corporation in and for the State of  
Washington; and ANNE E.  
KIRKPATRICK, a single person,  
Defendants.

NO. **12200810-2**

COMPLAINT FOR DAMAGES

Plaintiff Bradley N. Thoma complains and alleges as follows:

1. At all times material hereto, Plaintiff Bradley N. Thoma was a resident of Spokane County, Washington and an officer with the City of Spokane Police Department.

2. Defendant City of Spokane is a municipal corporation, located in Spokane County, State of Washington.

3. Pursuant to RCW 4.96.020, a Claim for Damages was filed with the City of Spokane over sixty (60) days prior to commencement of this action. (See attached Appendix A).

COMPLAINT FOR DAMAGES - 1

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1           4.     At all times material hereto, Defendant Anne E. Kirkpatrick was an employee  
2 and Chief of Police for Defendant City of Spokane, acting within the course and scope of  
3 her employment with the Defendant City, along with other employees of the Defendant City  
4 of Spokane.  
5

6           5.     Jurisdiction and venue are proper in this Court.  
7

8           6.     In October 1989, Defendant City of Spokane Police Department hired  
9 Plaintiff Thoma at an entry rank of Patrolman.

10          7.     In approximately 1992, the City of Spokane promoted Plaintiff Thoma to the  
11 rank of Private First Class, which is now referred to as the rank of Senior Patrolman.  
12

13          8.     In approximately 1996, the City of Spokane promoted Plaintiff Thoma to the  
14 rank of Detective.  
15

16          9.     In July 1998, the City of Spokane promoted Plaintiff Thoma to the rank of  
17 Sergeant.  
18

19          10.    Prior to his employment as a Spokane Police Officer, Plaintiff Thoma had a  
20 history of drinking alcohol socially and recreationally.  
21

22          11.    At some time prior to September 23, 2009, Plaintiff Thoma began suffering  
23 from the disease of alcoholism.  
24

25          12.    On the evening of September 23, 2009, while off duty and driving his private  
26 vehicle, Plaintiff Thoma collided with another vehicle. As a result, he was subsequently  
charged with driving under the influence and failure to remain at the scene of an accident.

1           13. On September 24, 2009, the City placed Plaintiff Thoma on paid leave from  
2 his position on the Spokane Police Department.

3  
4           14. Subsequent to the accident, Plaintiff Thoma was formally diagnosed with the  
5 disease of alcoholism, which was disclosed in writing to the Defendants.

6  
7           15. On November 13, 2009, the Spokane County District Court ordered deferred  
8 prosecution of the charges against Plaintiff Thoma, which required him to enter treatment  
9 for his diagnosed alcoholism disability, among other things. In accordance with then-  
10 existing Washington law, Plaintiff Thoma's driver's license was suspended and replaced  
11 with an Ignition Interlock Device License ("IIDL") for a mandatory period of two years,  
12 which required installation of an ignition interlock on his vehicle.

13  
14           16. At the time Plaintiff Thoma entered the deferred prosecution program, the  
15 State of Washington Department of Licensing permitted employers to waive the mandatory  
16 ignition interlock device as it pertains to vehicles operated for employment purposes during  
17 "working hours" by executing an Employer Declaration for Ignition Interlock Waiver.  
18 (Appendix B hereto).

19  
20  
21           17. At all times material hereto, the Defendants had actual knowledge of Plaintiff  
22 Thoma's alcoholism disability, his deferred prosecution order, his corresponding alcoholism  
23 disability treatment, and the State of Washington Department of Licensing's Employer  
24 Declaration for Ignition Interlock Waiver option.  
25  
26

1           18. Upon commencement of his alcoholism disability treatment and application of  
2 the associated terms and conditions, including the IIDL, Plaintiff Thoma had been a City of  
3 Spokane Police Officer for approximately 20 years.

4  
5           19. Defendants conducted an internal affairs interview of Plaintiff Thoma, as well  
6 as a Loudermill hearing, at which time Plaintiff Thoma requested that the City  
7 accommodate his disability and allow him to continue his career. Specifically, Plaintiff  
8 Thoma, individually and through the Spokane Police Guild, proposed various reasonable  
9 accommodations, including requesting that the City (1) execute the Employer Declaration  
10 for Ignition Interlock Waiver on the limited basis as it pertained to his patrol car; (2) permit  
11 installation of an ignition interlock device on his patrol car at his own expense; and/or  
12 (3) reassign him to another position for which he was qualified.

13  
14  
15           20. At all times material hereto, Plaintiff Thoma acknowledged and took  
16 responsibility for the unfortunate September 2009 off-duty incident involving his private  
17 vehicle. However, Plaintiff Thoma, despite his disability, remained capable of performing  
18 all essential functions of his job with the Spokane Police Department, including operating a  
19 patrol car with reasonable accommodation.

20  
21  
22           21. The accommodations proposed by Plaintiff Thoma were reasonable and  
23 consistent with previous actions of the City of Spokane and police departments around the  
24 State of Washington. Indeed, the Washington State Human Rights Commission's  
25 investigation subsequently concluded that "DOL [Washington State Department of  
26

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1 *Licensing] records have confirmed that there are several, at a minimum, law enforcement*  
2 *officers that have had state and local government entities sign waivers for the IID*  
3 *requirement, thereby enabling the officers to drive police/patrol vehicles without IID."*  
4

5 Further, other Spokane Police Department officers charged with DUI, both before and after  
6 Plaintiff Thoma's incident, were allowed to retain their jobs with the Spokane Police  
7 Department.  
8

9 22. Despite Thoma's reasonable accommodation requests, and acting with actual  
10 knowledge of Thoma's diagnosed disability, on December 9, 2009, following Plaintiff  
11 Thoma's Loudermill hearing, Defendant Kirkpatrick sent a letter to Plaintiff Thoma  
12 advising him of the City's "intent to terminate" his employment with the Spokane Police  
13 Department. Inexplicably, without performing any analysis of the reasonableness of  
14 Plaintiff Thoma's various accommodation requests, the City conclusively and self-servingly  
15 claimed that "no reasonable accommodation" existed. However, the City's "conclusion"  
16 was a mere pretext for its illegal disability discrimination and/or retaliation against Plaintiff  
17 Thoma for his disability and/or to further Defendant Kirkpatrick's improper, retaliatory  
18 agenda previously initiated against Plaintiff Thoma.  
19  
20  
21

22 23. The City's self-serving conclusion that some "risk" was associated with  
23 executing the IID waiver for Plaintiff Thoma ignored its duty to reasonably accommodate a  
24 disability recognized at both state and federal levels and, in doing so, subjected Plaintiff  
25 Thoma to disparate and retaliatory treatment.  
26

1           24. As a direct and proximate result of the City's notice of intent to terminate his  
2 employment, on December 11, 2009, Plaintiff Thoma filed a complaint for discrimination  
3 against the City of Spokane with the Washington State Human Rights Commission.  
4

5           25. In conjunction with the filing of his Human Rights Commission complaint,  
6 Plaintiff Thoma sought further diagnosis regarding his disability. The diagnosing physician  
7 concluded in writing that (1) "*alcoholism...is recognized as a disability;*" and (2) "*I have*  
8 *reviewed the job description and feel he [Thoma] can perform all the essential functions of*  
9 *his position.*" The City was provided a written copy of Plaintiff Thoma's disability  
10 diagnosis, which the City intentionally ignored.  
11  
12

13           26. Shortly after its wrongful and unsubstantiated December 9, 2009 notice of  
14 intent to terminate, the City exacerbated its misconduct by attempting to coerce Plaintiff  
15 Thoma into waiving his legal and equitable remedies related to the City's actionable  
16 misconduct. On Thursday, December 17, 2009, the City submitted a proposed "release" to  
17 Plaintiff Thoma, which provided:  
18

- 19
- 20 • *Thoma will be removed from his commissioned position as Police Sergeant*  
21 *and placed in layoff status immediately upon signing this Agreement.*
  - 22 • *Thoma will be eligible to return to a commissioned position in the rank of*  
23 *Detective upon completion of his deferred prosecution requirements,*  
24 *including return of his driver's license unencumbered by an ignition interlock*  
25 *requirement.*  
26

- 1 • *The City, through Civil Service, will begin working with Thoma immediately*
- 2 *to determine whether there are any non-commissioned positions within the*
- 3 *City that Thoma would be eligible to fill.*
- 4
- 5 • *Neither Thoma nor the Guild will file grievances or any other legal*
- 6 *challenges related to I.A. investigation # 09-059. The parties expressly*
- 7 *acknowledge that this Agreement constitutes a full and complete resolution*
- 8 *of all issues related to this investigation.*
- 9

10 27. The following day, on Friday, December 18, 2009, Plaintiff Thoma, through  
 11 the Spokane Police Guild, requested the opportunity to at least meet with a non-Guild, civil  
 12 rights attorney to review the SPD's proposed "release," which provided that he waived all  
 13 civil remedies. The Guild attorney identified that the unreasonable "*short time-frame*"  
 14 allowed for responding was the basis for her request. In response, Defendant Kirkpatrick  
 15 immediately placed Plaintiff Thoma on "*layoff status*" and threatened that he would be  
 16 terminated "*effective 3pm Monday [December 21, 2009]*". In addition to the City's  
 17 unlawful discrimination, its coercive attempt to discriminate against Plaintiff Thoma and  
 18 force him into signing an illegal release violated his right to due process.  
 19

22 28. Subsequently, the Defendant City and Defendant Kirkpatrick attempted to re-  
 23 characterize their coercive tactics, and described the release as an offer to place Plaintiff  
 24 Thoma on "laid off" status for two years until his driver's license was reinstated without an  
 25 IID requirement. However, Defendant City and Defendant Kirkpatrick's re-  
 26

1 characterization completely ignored that they were demanding that Plaintiff Thoma waive  
2 all civil claims without giving him the opportunity to consult with counsel regarding his  
3 statutorily-protected rights.  
4

5 29. On December 21, 2009, four days before Christmas, Defendant City of  
6 Spokane terminated Plaintiff Thoma's employment with the Spokane Police Department.  
7

8 30. On December 23, 2009, Plaintiff Thoma filed his Claim for Damages with the  
9 City of Spokane. (**Appendix A**).  
10

11 31. On or around January 1, 2011, due to a change in Washington law, Plaintiff  
12 Thoma secured a non-IID driver's license, which was approximately one (1) year prior to  
13 the expiration of the previously required 2-year period.  
14

15 32. On January 5, 2011, Defendants offered to reinstate Plaintiff Thoma to the  
16 demoted rank of Detective. Plaintiff Thoma agreed. Thereafter, Defendants breached that  
17 agreement, while offering instead to reinstate Plaintiff at a demoted rank only if he agreed  
18 to waive his legal and equitable remedies associated with the Defendants' illegal  
19 misconduct.  
20

21 33. Further, on January 7, 2011, Defendant Kirkpatrick prepared and sent an  
22 email to "All Police" acknowledging that Plaintiff Thoma had obtained a valid driver's  
23 license and was now "*able to perform the essential functions of a police officer.*"  
24 Kirkpatrick's email also stated that she had previously offered officer Thoma a "laid off"  
25 status and that she now "*would restore him as a police officer with a demotion to detective.*"  
26

1 *I have signed a letter to that offer, but it has not been signed off on the other side yet*  
2 *because it is my understanding that the Guild wants to grieve the demotion.”* However, the  
3 ‘letter’ Kirkpatrick actually was referring to was in fact a new “Agreement” that she  
4 apparently unilaterally prepared containing different terms and conditions than those that  
5 had been orally reached and agreed to between the Spokane Police Guild and Defendant  
6 City of Spokane’s legal department.  
7

8  
9 34. The Defendant City and Defendant Kirkpatrick’s breach of the previous  
10 agreement that was reached concerning Plaintiff Thoma’s employment not only constituted  
11 a breach of contract but also an unlawful attempt to expand ultra vires, the duties and  
12 authority imbued to her office and to her position, all in violation of Washington law.  
13

14 35. After significant negotiation between the parties, in December 2011, the  
15 parties reached yet another agreement on the terms of a “global resolution” to Plaintiff  
16 Thoma’s claims, including his (1) Guild claims, (2) civil claims, and (3) Human Rights  
17 Commission complaint. The Agreement was memorialized in writing and subscribed to by  
18 the attorneys, as required by Civil Rule 2A.  
19

20  
21 36. In justifiable reliance on the Agreement, Plaintiff Thoma decided to forego  
22 pursuit of other employment opportunities.  
23

24 37. On February 13, 2012, the City, by and through Mayor Condon, among  
25 others, executed a Settlement Agreement with Brad Thoma and the Washington State  
26

1 Human Rights Commission, which was agreed and intended to be approved by all parties  
2 prior to March 1, 2012. (Appendix C hereto).  
3

4 38. Between February 13, 2012 and February 23, 2012, Defendant City and  
5 Mayor Condon admitted that it was in the City's best interest to enter into the Settlement  
6 Agreement with Plaintiff Thoma and even "defended" the City's decision to do so. Indeed,  
7 Mayor Condon, as reported by local media outlets "*concedes that Kirkpatrick's actions left*  
8 *Spokane liable for damages.*" Mayor Condon stated, "*It's difficult to say that but yes, you*  
9 *do need to do things by the book, and we're [City of Spokane] learning our lessons when*  
10 *we don't do things by the book. It's very hard to defend it.*"  
11  
12

13 39. However, despite the Defendant City and Mayor Condon's admissions, on  
14 February 23, 2012, ten days after unequivocally executing a Settlement Agreement with  
15 Plaintiff Thoma, the Defendant City of Spokane and Mayor Condon anticipatorily  
16 repudiated the agreement. Instead, without basis in law or fact, the City and Mayor Condon  
17 unilaterally changed the material terms of the agreement and made as an additional,  
18 undocumented condition precedent, a "finding" by the Washington State Human Rights  
19 Commission. However, the express terms of the executed Agreement provided that it was  
20 premised on no finding by the Human Rights Commission. Indeed, the City's legal  
21 department titled the Agreement "PRE-FINDING SETTLEMENT AGREEMENT."  
22  
23  
24  
25  
26

1           40. On February 27, 2012, Plaintiff Thoma voluntarily withdrew his Human  
2 Rights Commission Complaint. Thereafter, Plaintiff Thoma requested the City reaffirm its  
3 agreement to resolve his claims. The City refused to do so.  
4

5                               **FIRST CAUSE OF ACTION**  
6                               **(Discrimination – RCW 49.60 et seq.; 42 U.S.C. § 12101 et seq.)**

7           41. Plaintiff Thoma re-alleges Paragraphs 1 through 40 above and incorporates  
8 them by reference as though fully set forth herein.  
9

10          42. The acts alleged herein constitute disability discrimination in violation of  
11 RCW 49.60 et seq. and 42 U.S.C. § 12101 et seq.

12          43. Due to his diagnosis and treatment for the disease and disability of  
13 alcoholism, Plaintiff Thoma is a member of a protected class.  
14

15          44. Plaintiff Thoma was subjected to an adverse employment action by  
16 Defendants.  
17

18          45. Defendants' misconduct and admissions establish it treated Plaintiff Thoma  
19 differently and disparately than someone not afflicted with the disability of alcoholism, and  
20 even other Spokane Police Department officers charged with driving under the influence.  
21

22          46. Plaintiff Thoma was subjected to adverse employment actions in violation of  
23 RCW 49.60 et seq. and 42 U.S.C. § 12101 et seq.

24          47. As a direct and proximate result of Defendants' conduct, Plaintiff Thoma has  
25 been damaged in an amount to be proven at trial.  
26



**SECOND CAUSE OF ACTION**  
**(Breach of Contract)**

48. Plaintiff Thoma re-alleges Paragraphs 1 through 47 above and incorporates them by reference as though fully set forth herein.

49. As alleged herein, the parties entered into multiple enforceable contracts.

50. Plaintiff Thoma performed all of his obligations under the contracts.

51. Defendants breached their express and implied obligations, including the implied covenant of good faith and fair dealing.

52. Defendants' breaches have proximately caused Plaintiff Thoma damages in an amount to be proven at trial, plus incidental and consequential damages as provided by law.

**THIRD CAUSE OF ACTION**  
**(Fourteenth Amendment Violations—42 U.S.C. § 1983)**

53. Plaintiff Thoma re-alleges Paragraphs 1 through 52 above and incorporates them by reference as though fully set forth herein.

54. Defendants, while acting under the color of state law, maliciously, recklessly and/or willfully or wantonly violated Plaintiff Thoma's procedural and substantive due process guarantees and deprived Thoma of his liberty and property interests by arbitrarily and capriciously refusing to accommodate his disability and by attempting to coerce Plaintiff Thoma into waiving his state and federal rights.

55. As a direct and proximate result of the Defendants' unlawful conduct, Plaintiff Thoma suffered damages. Plaintiff's claim for damages resulting from such

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1 violation of his due process rights is made pursuant to 42 U.S.C. § 1983. The Defendants  
 2 are liable, jointly and severally, for Plaintiff Thoma's damages, including punitive damages  
 3 in amounts to be determined at trial.  
 4

5 **FOURTH CAUSE OF ACTION**  
 6 **(Vicarious Liability)**

7 56. Plaintiff Thoma re-alleges Paragraphs 1 through 55 above and incorporates  
 8 them by reference as though fully set forth herein.  
 9

10 57. As the principal for and the employer of the named individual Defendant  
 11 Kirkpatrick, Defendant City of Spokane, pursuant to the doctrine of respondeat superior, is  
 12 vicariously liable for the wrongful acts and omissions of Defendant Kirkpatrick, who was  
 13 the actual agent, representative, and employee of the Defendant City and who at all times  
 14 was acting within the scope of her employment or within the scope of the apparent authority  
 15 given by the Defendant City. Such acts were authorized or ratified by Defendant City.  
 16 Such acts were the proximate cause of Plaintiff Thoma's injuries and damages for which he  
 17 is seeking recovery in an amount to be proven at the time of trial.  
 18  
 19

20 **FIFTH CAUSE OF ACTION**  
 21 **(Infliction of Emotional Distress)**

22 58. Plaintiff Thoma re-alleges Paragraphs 1 through 57 above and incorporates  
 23 them by reference as though fully set forth herein.  
 24

25 59. The Defendants' unlawful conduct toward Plaintiff Thoma was careless,  
 26 reckless, unreasonable, negligent and/or intentional and was the proximate cause of the

1 infliction of severe mental anguish and emotional distress suffered by Plaintiff Thoma, for  
 2 which he is entitled to recover damages in an amount to be established at trial.  
 3

4 **SIXTH CAUSE OF ACTION**  
 5 **(Negligence/Gross Negligence)**

6 60. Plaintiff Thoma re-alleges Paragraphs 1 through 59 above and incorporates  
 7 them by reference as though fully set forth herein.  
 8

9 61. The direct and proximate cause of the aforementioned misconduct was the  
 10 negligence and/or gross negligence of the Defendants in failing to conduct any investigation  
 11 regarding Plaintiff Thoma's requested accommodations.  
 12

13 62. Defendant City of Spokane, by its negligence and/or the gross negligence of  
 14 its employees and agents, gave express and/or implied consent permitting wrongful acts to  
 15 be perpetrated against Plaintiff Thoma. As a direct result, the Defendants are liable for any  
 16 damages caused by Defendants' negligence and/or gross negligence.  
 17

18 63. Defendants, jointly and severally by their conduct, breached their duty to  
 19 Plaintiff in failing to exercise the standard of care which Defendants owed to him and, in  
 20 doing so, negligently caused Plaintiff to suffer injury.  
 21

22 64. As a further direct and proximate result of Defendants' joint and several  
 23 negligence and/or gross negligence, and unlawful acts in violation of the laws of the State  
 24 of Washington, Plaintiff Thoma has suffered physical, mental, and emotional injuries in  
 25 amounts to be proven at the time of trial.  
 26

**SEVENTH CAUSE OF ACTION**

**(Outrage)**

65. Plaintiff Thoma re-alleges Paragraphs 1 through 64 above and incorporates them by reference as though fully set forth herein.

66. Defendants' conduct against the Plaintiff was so outrageous in character as to be absolutely intolerable in a civilized society and went beyond all possible bounds of decency. Defendants owed a duty of care to Plaintiff which they breached, such breach constituting the tort of outrage and which directly and proximately caused the Plaintiff severe mental anguish, humiliation, embarrassment, and emotional distress, for which they are entitled to recover damages.

67. As a direct and proximate result of the Defendants' negligence, Plaintiff Thoma suffered substantial physical, mental, and emotional injuries. As a result thereof, Plaintiff Thoma has suffered and will continue to suffer pain and suffering, both mental and physical; emotional distress; and impairment to the ability to enjoy life, all to his general damages in an amount to be proven at the time of trial.

**EIGHTH CAUSE OF ACTION**

**(Wrongful Withholding of Wages)**

68. Plaintiff Thoma re-alleges Paragraphs 1 through 67 above and incorporates them by reference as though fully set forth herein.

1           69. Defendant City of Spokane refused and/or failed to pay Plaintiff  
2 compensation owed from the date of his wrongful discharge to present without lawful  
3 purpose.  
4

5           70. The Defendant City's conduct is a violation of RCW 49.48.010, as well as  
6 RCW 49.52.050 and 49.52.070.  
7

8           71. As a direct and proximate result of Defendant City of Spokane's violation of  
9 RCW 49.48.010, RCW 49.52.050, and RCW 49.52.070, Plaintiff Thoma has suffered  
10 economic injury and loss, and seeks damages herein, including double the amount of  
11 compensation wrongfully withheld from him and payment of his reasonable attorney fees  
12 and costs incurred herein pursuant to RCW 49.48.030 for having to bring this action.  
13

14                           **NINTH CAUSE OF ACTION**  
15                           **(Retaliation)**

16           72. Plaintiff Thoma re-alleges Paragraphs 1 through 71 above and incorporates  
17 them by reference as though fully set forth herein.  
18

19           73. Plaintiff Thoma engaged in statutorily protected activity by refusing to be  
20 coerced into waiving his legal and equitable rights against Defendants.  
21

22           74. Defendants retaliated against Plaintiff Thoma for refusing to be coerced into  
23 waiving his legal and equitable rights against Defendants.

24           75. The acts above constitute retaliation and/or harassment in violation  
25 RCW 49.60 and Defendant City of Spokane policy.  
26

COMPLAINT FOR DAMAGES - 16

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1           76. As a direct and proximate result of Defendant City of Spokane's retaliatory  
2 conduct, Plaintiff Thoma has suffered economic injury and loss, and seeks damages herein,  
3 to be proven at trial.  
4

5                           **TENTH CAUSE OF ACTION**  
6                           **(Promissory Estoppel/Implied Contract)**

7           77. Plaintiff Thoma re-alleges Paragraphs 1 through 76 above and incorporates  
8 them by reference as though fully set forth herein.  
9

10          78. Defendant City of Spokane made a promise and/or representation to Plaintiff  
11 Thoma, which it knew or should have known or expected that Plaintiff Thoma would  
12 reasonably rely upon to change his position regarding the City's reinstatement of Plaintiff's  
13 employment.  
14

15          79. Based on Defendants' promises and/or representations regarding his  
16 reinstatement, Plaintiff Thoma did justifiably rely upon such promises to change his  
17 position.  
18

19          80. Injustice can only be avoided by enforcing Defendants' promises and/or  
20 representations.  
21

22          81. As a direct and proximate result of Defendants' failure to adhere to its  
23 promises and/or representations regarding its reinstatement of Plaintiff Thoma, Plaintiff  
24 Thoma has suffered damages in an amount to be proven at the time of trial.  
25  
26

**ELEVENTH CAUSE OF ACTION**  
**(Equitable Estoppel)**

82. Plaintiff Thoma re-alleges Paragraphs 1 through 81 above and incorporates them by reference as though fully set forth herein.

83. Defendants made verbal and written representations that they intended to reinstate Plaintiff Thoma to the rank of Detective, which caused Plaintiff Thoma to rely upon such conduct and actions.

84. Plaintiff Thoma reasonably relied upon Defendants' conduct and actions.

85. Plaintiff Thoma will be injured if Defendants are allowed to contradict, disavow, or repudiate their actions and conduct in an amount to be proven at the time of trial.

**III. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Bradley N. Thoma prays as follows:

1. For judgment against the Defendants, jointly and severally, for special and general damages in amounts to be proven at the time of trial;

2. For damages pursuant to 42 U.S.C. § 1983; § 1985 including an award of punitive damages;

3. For damages pursuant to RCW 49.48.030;

4. For damages pursuant to RCW 49.60.030;

5. For attorney fees and costs;

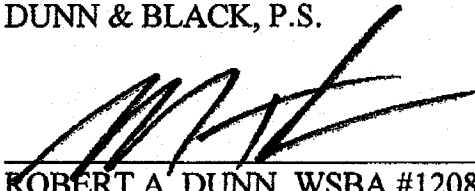
1           6.     For prejudgment interest as provided by law;

2           7.     For compensatory damages to include, but not restricted to, damages for  
3           emotional distress and mental anguish in amounts to be proven at trial; and  
4

5           8.     For such additional relief as the Court may deem just and proper.

6           DATED this 28<sup>th</sup> day of February, 2012.

7  
8                                   DUNN & BLACK, P.S.

9  
10                                    
11                                  ROBERT A. DUNN, WSBA #12089  
12                                  MICHAEL R. TUCKER, WSBA #38005  
13                                  Attorneys for Plaintiff

RECEIVED

DEC 23 2009

CITY CLERK'S OFFICE  
SPOKANE, WA**CLAIM FOR DAMAGES**  
CITY OF SPOKANE, WASHINGTONPLEASE PRINT  
IN BLACK INK1. Claimant's Name: Brad ThomaResidence: 18211 N. Mushroom Ln.Mead, WA 99021

(List full address: Street, City, State, Zip Code)

Phone #: Home \_\_\_\_\_ Work \_\_\_\_\_ Birthdate: 12/21/1964

2. Residence of claimant for six months prior to the time the claim of damages accrued (if different): \_\_\_\_\_

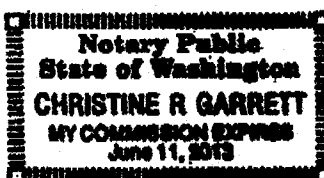
3. Name, address and telephone of owner of any damaged property if not given above: N/ATOTAL CLAIM: \$ 4,000,000.004. CLAIM INCIDENT DATE: 12/21/09 TIME: 3:00 p.m. PLACE: Spokane Police DepartmentDESCRIPTION OF INCIDENT: (Give full account; describe how the City was at fault. List defects causing loss and City acts or omissions) See attached☒ Attachments (Attach additional sheets if necessary.)5. Give an itemization of your claim, listing specific losses actually sustained or expected: Lost wages, (back and front pay), damages for emotional distress, attorney fees and costs.☐ Attachments (Attach bills, statements, estimates or other proof of your specific items of loss.)6. Were any other persons involved in the incident? Give details with name, address and telephone: \_\_\_\_\_  
Chief Anne Kirkpatrick, Spokane Police Department, 1100 W. Mallon, Spokane, WA 992607. Name, address and telephone of witnesses or persons with further information: \_\_\_\_\_  
Dunn & Black, P.S., 111 North Post, Suite 300, Spokane, WA 992018. Is claimant willing to settle or compromise? If so, state amount acceptable as full settlement: \$ 4,000,000.00

NOTE: Please see Spokane Municipal Code 4.02.030 for further information on claim requirements.

MEDICAL INFORMATION DISCLAIMER: Per chapter 42.56 RCW (Public Records Act), a filed Claim for Damages and its attachments are subject to public disclosure. If you have any attachments to this claim containing medical information, please enclose those attachments in a sealed envelope marked with your name and the phrase "Medical Contents."

STATE OF WASHINGTON )  
County of Spokane )I, Brad Thoma (print name), being first duly sworn, on oath, depose and say: That I have read the foregoing claim, know the matter therein contained, and the same is true to the best of my knowledge.SUBSCRIBED AND SWORN to before me this 23rd day of December, 2009

FILE COMPLETED FORM WITH:

Spokane City Clerk's Office  
Fifth Floor, Municipal Bldg.  
808 W. Spokane Falls Blvd.  
Spokane WA 99201-3342  
509-625-6350Notary Public in and for the State of Washington,  
Residing at Spokane  
My commission expires 6/11/13

Rev. 02.12.2008

APPENDIX A





## Employer Declaration for Ignition Interlock Waiver

If you are applying for, or have, an Ignition Interlock Driver License, you must:

- carry this completed form when you drive an employer owned vehicle that does not have an ignition interlock device.
- send a copy of this form to:

Driver Records  
Department of Licensing  
PO Box 9030  
Olympia, WA 98507

You may only drive this vehicle(s) during working hours.

### Employee

PRINT OR TYPE--Name of applicant (Last, First, Middle Initial)		
Washington driver license number	Date of birth	(Area code) Daytime telephone number

### Employer

Name of employee/representative name	Company (area code) telephone number	
Company name	UBI number	
Company street address		
City	State	ZIP Code

This employee is required to operate a vehicle during working hours that is owned by this company.

*I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.*

\_\_\_\_\_  
Date and place

**X**

\_\_\_\_\_  
Employer signature

**SETTLEMENT AGREEMENT**

**between**

**The Washington State Human Rights Commission**

**and**

**Brad Thoma, Complainant**

**and**

**City of Spokane, Respondent**

**HRC # 32EDZ-0256-09-0**

**Filed: 12/11/2009**

**EEOC # 38G-2010-00151**

**Filed: 12/11/2009**

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The above-referenced complaint has been filed pursuant to Chapter 49.60 RCW, the Washington State Law Against Discrimination. The parties indicated above have entered into this agreement voluntarily and in full settlement of this complaint. This agreement is contingent on approval by the Spokane City Council and will become effective upon approval by the Washington State Human Rights Commission.

**I. OBLIGATIONS OF THE PARTIES**

- A. In consideration of the Respondent's compliance in full with the terms of this agreement, Complainant hereby waives and releases all claims against the Respondent, and/or any of its agents or employees, with respect to any matters which were or might have been alleged in the above-referenced complaint. Complainant agrees that this settlement constitutes a request for closure of this complaint against Respondent.
- B. In consideration of the Respondent's compliance in full with the terms of this agreement, the Human Rights Commission agrees to close this complaint. The parties agree that in the event of non-compliance, the Commission may proceed to investigate and prosecute this complaint as if this agreement did not exist. The parties agree that this release and closure of this complaint does not apply to any other complaints or matters of compliance that may be pending before the Commission.

**APPENDIX C**

- C. In exchange for the performance of obligations by the Complainant and the Commission, the Respondent will:
- a. Pay to the Complainant the sum of \$275,483.03 as an award in full settlement of any and all claims arising out of the events complained of relating to the claim in question. Payment in full shall be tendered no later than twenty (20) business days after the date of the Commission's Final Order setting forth the terms of this agreement. Payment shall be made by certified check, cashier's check, money order or check made payable to Brad Thoma and forwarded to: Compliance Unit, R. Dean Hirst, Washington State Human Rights Commission; 711 S. Capitol Way - Suite 402, PO Box 42490, Olympia, WA 98504-2490; and
  - b. Pay to the Complainant's legal counsel the sum of \$15,000.00 in consideration of the legal fees expended in representing the Complainant with regard to this claim. Payment in full shall be tendered no later than twenty (20) business days after the date of the Commission's Final Order setting forth the terms of this agreement. Payment shall be made by check made payable to Dunn & Black and forwarded to: Compliance Unit, R. Dean Hirst, Washington State Human Rights Commission; 711 S. Capitol Way - Suite 402, PO Box 42490, Olympia, WA 98504-2490; and
  - c. Reinstate Complainant to the classification of Sergeant and simultaneously demote Complainant to the classification of Detective, effective March 1, 2012. Upon his reinstatement, Complainant's seniority, leave banks, and benefits will be restored to the level they would have been had he never separated employment; and
  - d. Provide training to all Respondent management staff on the Washington Law Against Discrimination, RCW 49.60, with an emphasis on disability discrimination. Respondent will take full responsibility for locating, securing, and obtaining said training. Said training shall be attended, no later than 120 days after the Commission's order setting forth the terms of this agreement. Respondent agrees to provide written verification of such training within 30 days after the completion of said training and send it to: Compliance Unit at the address above. Erin Jacobson, Assistant City Attorney, will be responsible for ensuring that these actions are completed in a timely manner. Erin Jacobson can be reached at [ejacobson@spokanecity.org](mailto:ejacobson@spokanecity.org) or (509) 625-6889 and will be the contact person in the event there are questions from the Compliance Unit.
- D. Further, Respondent agrees not to retaliate against or interfere with the Complainant, or any other person who participated in this proceeding, as a result of their exercise of any rights or privileges provided for in Chapter 49.60 RCW.
- E. The Respondent's signature on this document does not constitute an admission of any violation of Chapter 49.60 RCW. Furthermore, this agreement does not constitute a determination by the Commission that any violation of Chapter 49.60 RCW has or has not occurred.

## II. ENFORCEMENT AND BREACH

- A. It is understood and agreed that the Commission may seek enforcement of this agreement pursuant to RCW 49.60.260. It is further understood and agreed that the Commission shall determine whether the Complainant and Respondent have fully complied with the terms of this agreement.

- B. In the event of a breach of this agreement, the Commission shall, upon receiving notice of such breach, send a written notice to the breaching party specifying the nature of the breach. The breaching party shall have fifteen days from receipt of the notice to remedy the breach. If the breach is not remedied within that time, the Commission may take action including, among other remedies, continuing its investigation or bringing an action in court for specific performance of this agreement.

### **III. ENTIRE AGREEMENT**

This agreement comprises the entire agreement of the parties with respect to the above-referenced complaints. No other agreement, statement, or promise made by any party with respect to this complaint, which is not included in this agreement, shall be binding or valid. The terms of this agreement may be modified or amended only by a written amendment signed by all of the parties and approved by the Washington State Human Rights Commission.

### **IV. SEVERABILITY**

The provisions of this agreement are intended to be severable. If any term or provision of this agreement is illegal or invalid for any reason, the validity of the remainder of the agreement will not be affected.

### **V. LAWS GOVERNING**

This agreement shall be governed by the laws of the State of Washington and any question arising from the agreement shall be construed or determined according to such law.

### **VI. PUBLIC RECORD**

This agreement is a public record and is subject to public disclosure or release.

### **VII. PARTIES BOUND**

This agreement shall apply to and be binding upon the heirs, successors, agents, employees, and assignees of the parties.

### **VIII. OPPORTUNITY TO OBTAIN LEGAL ADVICE BEFORE SIGNING**

All parties acknowledge that they have been advised to seek the advice of legal counsel of their own choosing and have had adequate opportunity to obtain such advice prior to signing this agreement.


The undersigned hereby acknowledge that they have read, understand and agree to the terms of this agreement and that they have the authority to sign this agreement on behalf of the indicated parties.

For the City of Spokane, Respondent

  
Brad Thoma, Complainant      2/13/12  
Date

  
David A. Condon, Mayor      2/13/12  
Date

\_\_\_\_\_  
Civil Rights Investigator      Date

  
Assistant City Attorney      2/13/12  
Approved as to Form      Date

\_\_\_\_\_  
Assistant Director for Enforcement      Date

\_\_\_\_\_  
City Clerk      Date  
Attest